

ABRAMS FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

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Rochester

ANDREA J. CARUSO
Partner
acaruso@abramslaw.com

January 7, 2020

Via ECF and Email

Honorable Robert D. Drain
United States Bankruptcy Judge
Southern District of New York
United States Bankruptcy Court
300 Quarropas Street
White Plains, New York 10601

Re: *In re 53 Stanhope, LLC, et al.*, Case No. 19-23013 (RDD) (Bankr.
S.D.N.Y.)

Dear Judge Drain:

I am writing, pursuant to Rule 7001-1(b) and the Court's Chambers Rules, to request that the Court schedule an in-person conference concerning the failure of Signature Bank to comply with a non-party document subpoena served on September 26, 2019 and concerning 14 non-party depositions served or to be served by the Brooklyn Lender, LLC ("Brooklyn Lender").

Signature Bank subpoena

The Signature Bank subpoena, which was served on the bank on September 26, 2019, seeks documents concerning mortgage loans extended by Signature Bank to 17 debtors. In particular, the subpoena requested, among other things: (i) loan applications; (ii) loan documents; (iii) documents concerning any alleged defaults by the debtors; (iv) servicing records; (v) proof of payment of real estate taxes and insurance; (vi) default and acceleration letters; (vii) correspondence between Signature Banks, Brooklyn Lender LLC and Maverick Real Estate Partners LLC concerning the loans; and (viii) marketing materials used in an effort to sell the loans. As the Court knows, the documents requested in the Signature Bank subpoena go to the core of the claims made by Brooklyn Lender and the debtors' defenses of the debtors to those claims. The subpoena was returnable on October 21, 2019.

By letter dated October 28, 2019, Signature Bank produced 352 pages of documents relating to the mortgage loan extended to **1 of the 17 debtors**, 55 Stanhope LLC. The production, even with respect to 55 Stanhope LLC, was far from complete. Signature Bank has never produced any additional documents in response to the subpoena or with respect to any of the other debtors.

My firm pressed Signature Bank's counsel to produce remaining responsive documents, but counsel ignored our requests until November 7, 2019, when counsel finally requested until December 6, 2019 to respond to the subpoena. We agreed to that request. On November 7, 2019, I sent an email to Signature Bank's counsel stating, in relevant part, "[w]e spoke to the judge today and we will give you until December 6th to produce all documents responsive to the subpoena served on you[.]. However, the judge made clear that after giving you a reasonable time to provide these documents the failure to do so will entitle to us to relief from Judge Drain."

When I received no response to my November 7, 2019 email, I sent a follow up email to Signature Bank's counsel on November 25 stating "I did not receive a response to my [November 7 email] Please be advised, in accordance with your request and my email below, the documents responsive to the subpoena on Signature Bank are all due by next Friday, December 6, 2019.

We did not receive any further response or documents by the December 6 deadline. On December 12, 2019, I therefore emailed Signature Bank's counsel stating that we had not received any response to my emails or to the subpoena and requesting confirmation that the responsive documents had been served and were on their way.

When I did not receive any response to my December 12 email, I emailed to counsel again on December 20, 2019 noting the bank's continuing failure to respond and stating that I expected a response that same day.

Counsel finally responded to my requests in a December 20, 2019 email. Incredibly, the email announced that the bank would need additional time to respond to the subpoenas and stated that "[w]e therefore intend to serve formal responses to your subpoena along with an initial production of documents by December 30, 2019, and to produce the remaining documents on a rolling basis." Even after the additional email and assurance, no additional production was made by December 30.

By email dated January 2, 2020, I told Signature Bank's counsel that, given the strict discovery deadlines ordered by the Court, we would need all documents to be produced by the following week at the latest and that rolling disclosure would not be acceptable.¹ In response, Signature Bank's counsel for the first time stated that they would only produce with a confidentiality stipulation and order. After almost 2 months of promising production without any mention of a confidentiality order, we were left with no choice but to seek relief from the Court. As of the date of this letter, we still have not received any additional response to the subpoena.

At this stage, it is clear that Signature Bank has no intention of responding in good faith to the subpoena. The debtors therefore intend to file a motion to compel and seeking further appropriate relief under the Federal Rules of Bankruptcy Procedure.

Signature Bank's sustained failure to comply with the subpoena has hamstrung the debtors from conducting discovery that is critical to defending themselves from the lender's claims in these cases. Since Signature Bank is the predecessor-in-interest to Brooklyn Lender, as the original loan holder, the documents requested are directly pertinent and distinguishes Signature Bank from the

¹ Copies of my email exchanges with Signature Bank's counsel are attached to this letter.

other non-party discovery. Under the amended scheduling order entered by the Court on December 18, 2019, the deadline for completing all non-party and expert depositions is January 31, 2020. Given the debtors' need to compel Signature Bank's compliance with the subpoena, to review the responsive documents and to depose Signature Bank once its documents have been produced and reviewed, the debtors respectfully request that the Court stay the deadline for completing non-party and expert discovery and all remaining deadlines in the amended scheduling order until after the Court decides the motion to compel.

Brooklyn Lender's nonparty subpoenas

At the conference, the debtors also intend to discuss with the Court the unjustified and burdensome nonparty discovery sought by Brooklyn Lender, which the lender is apparently pursuing in a post-hoc attempt to find some justification for its unsupported declarations of default and acceleration of the debtors' mortgage loans.

To date, the debtors have received notices and copies of separate document and deposition subpoenas that Brooklyn Lender has or will serve on the following **14 non-parties**: (i) CSRE LLC, (ii) Fink & Zelmanovitz, P.C., (iii) Judah Zelmanovitz; (iv) United Commercial Group, (v) Lightstone Capital LLC, (vi) Allen Stein, (vii) Chava Rosenberg a/k/a Chava Orlander, (viii) Eleizer Schwimer, (ix) Herman Greenfeld; (x) I&C O Associates, (xi) Imre Orlander, (xii) Moses Guttman, (xiii) Moses Strulovitch; and (xiv) Signature Bank. The debtors are unaware whether any of these non-parties have produced the voluminous documents requested in the document subpoenas addressed to them, but none of these the depositions have yet been scheduled or occurred.

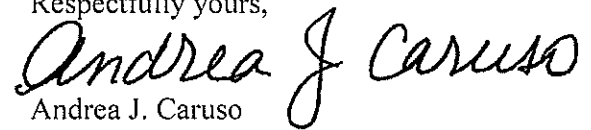
As relates to Brooklyn Lender's declared defaults and acceleration of the loans, the issue is whether Brooklyn Lender had evidence of a default **at the time the loans were accelerated**. Brooklyn Lender should not be permitted to engage in a wide-ranging fishing expedition in an attempt to find evidence to justify, after the fact, the alleged defaults and acceleration of the loans. But if the Court does allow these non-party depositions to proceed, the 10-day period allowed by the amended scheduling order for the completion of non-party depositions is obviously insufficient to complete 13 non-party depositions as well as the depositions of the parties' experts.

We therefore request that the Court schedule a pre-motion conference to discuss these matters. At the conference, the debtors intend to request that the Court set a briefing schedule for a motion to compel Signature Bank to comply with the document subpoena served on the bank on September 26, 2020. We will further request that the Court stay the January 31, 2020 deadline for the completion of non-party and expert discovery as well as all the remaining deadlines in the amended scheduling order pending its decision on the motion to compel.

Finally, the debtors have been discussing some additional discovery-related issues with the Brooklyn Lender as well, including issues concerning scheduling. If possible, we would like to discuss these issues with the Court and attempt to resolve them at tomorrow's hearing.

Thank you for your consideration of these requests.

Respectfully yours,


Andrea J. Caruso

cc: Daniel A. Fliman, Esq.
Jennifer S. Recine, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038

(BY ECF and EMAIL)

Joshua M. Herman, Esq.
Farrell Fritz, P.C.
622 Third Avenue
Suite 37200
New York, NY 10017

(BY EMAIL)

Andrea J. Caruso

From: Herman, Joshua M. <JHerman@FarrellFritz.com>
Sent: Thursday, January 2, 2020 12:41 PM
To: Andrea J. Caruso
Cc: Wicks, James; John Cahalan
Subject: Re: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae [F-F.FID1124157]
Attachments: image10be3a.JPG; image63e09d.JPG; image03863e.JPG

Andrea,

Happy New Year.

We intend to produce, but subject to a confidentiality Stipulation and Order. If you have a proposed one, we will review. Otherwise, we can prepare one. We are continuing to review and, once confidentiality order is in place, we will produce on a rolling basis.

-Josh

On Jan 2, 2020, at 9:56 AM, Andrea J. Caruso <ACaruso@abramslaw.com> wrote:

External Email

Josh:

Please confirm that documents were sent on December 30th. This rolling disclosure is not going to work. We are on strict deadlines from the court and we need the documents now. Please go back to the legal department. We need ALL documents next week. No later. Signature has had months to get this production together under the current subpoena. We have been patient and accommodating but now your client is just taking advantage that we can no longer tolerate. If the entirety of the records are not produced by next week we will go to the Judge to compel that production.

Sent from my iPhone

Andrea J. Caruso, Esq.

<image10be3a.JPG>

Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACaruso@Abramslaw.com<<mailto:ACaruso@Abramslaw.com>>

<image63e09d.JPG>

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Andrea J. Caruso

From: Andrea J. Caruso
Sent: Thursday, January 2, 2020 9:57 AM
To: Herman, Joshua M.
Cc: Wicks, James; John Cahalan
Subject: Re: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae [F-F.FID1124157]

Josh:

Please confirm that documents were sent on December 30th. This rolling disclosure is not going to work. We are on strict deadlines from the court and we need the documents now. Please go back to the legal department. We need ALL documents next week. No later. Signature has had months to get this production together under the current subpoena. We have been patient and accommodating but now your client is just taking advantage that we can no longer tolerate. If the entirety of the records are not produced by next week we will go to the Judge to compel that production.

Sent from my iPhone

Andrea J. Caruso, Esq.

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO, FERRARA, WOLF & CARONE, LLP

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On Dec 20, 2019, at 2:45 PM, Herman, Joshua M. <JHerman@farrellfritz.com> wrote:

Andrea,

The Signature Bank legal department's document collection group has taken longer than anticipated. We have also been delayed by the extensive requests served by Brooklyn Lender. While we expect to produce many of the documents requested in 7-10 days, we will require additional time to produce the new categories of documents not requested in the Kings County subpoenas. We therefore intend to serve formal responses to your subpoena along with an initial production of documents by December 30, 2019, and to produce the remaining documents on a rolling basis. We appreciate your patience and understanding in this matter.

Best regards,

Joshua M. Herman

Farrell Fritz, P.C.

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From: Andrea J. Caruso <ACaruso@Abramslaw.com>

Sent: Friday, December 20, 2019 12:36 PM

To: Herman, Joshua M. <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; John Cahalan <JCahalan@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

External Email

Josh and Jim:

Another week has passed and again radio silence. You requested an extension of time until December 6, 2019 which was granted. However, to date, you have failed to produce any documents nor have you given even the courtesy of a responsive single email all month despite the courtesy granted to you. The silence and lack of production is unacceptable and questions who is instructing you to take such a position. The failure to respond to my emails and produce the requested and required documents leaves the Debtors without any choice but to file a motion, which honestly is ridiculous. I have made every good faith attempt to resolve this without Court intervention but the complete silence and unprofessionalism have left me without any further options. I expect a response **BY END OF BUSINESS TODAY.**

Please be guided accordingly.

Andrea J. Caruso, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACaruso@Abramslaw.com

<image002.jpg>

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From: Andrea J. Caruso <ACaruso@Abramslaw.com>

Sent: Thursday, December 12, 2019 2:56 PM

To: 'Herman, Joshua M.' <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; John Cahalan <JCahalan@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Importance: High

Josh and Jim:

I did not receive a response to the Signature Bank Subpoena on or before 12/6/19 which was the extension date requested by you. Nor did I receive a response to my below emails. Please confirm that all responses have been served.

Andrea J. Caruso, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACaruso@Abramslaw.com

<image002.jpg>

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From: Andrea J. Caruso <ACaruso@Abramslaw.com>

Sent: Monday, November 25, 2019 1:47 PM

To: 'Herman, Joshua M.' <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; John Cahalan <JCahalan@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Josh and Jim:

I did not receive a response to my below email. Please be advised, in accordance with your request and my below email, the documents responsive to the subpoena on Signature Bank are all due by next Friday, December 6, 2019.

Thank you,

Andrea J. Caruso, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACaruso@Abramslaw.com

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From: Andrea J. Caruso <ACaruso@Abramslaw.com>

Sent: Thursday, November 7, 2019 8:55 PM

To: 'Herman, Joshua M.' <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Susan Mauro <SMauro@Abramslaw.com>; John Cahalan

[<JCahalan@Abramslaw.com>](mailto:JCahalan@Abramslaw.com)

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Thank you.

We spoke with the judge today and we will give you until December 6th to produce all documents responsive to the subpoena served on your. However, the judge made clear that after giving you a reasonable time to provide these documents the failure to do so will entitle us to relief from Judge Drain. If possible, please provide the documents on a rolling basis.

From here on out, please make sure all communication is directed to me and cc John Cahalan, who is cc'ed hereon as well.

Thank you,

Andrea J. Caruso, Esq.



Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACarus@Abramslaw.com



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From: Herman, Joshua M. [<JHerman@FarrellFritz.com>](mailto:JHerman@FarrellFritz.com)

Sent: Thursday, November 7, 2019 5:48 PM

To: Andrea J. Caruso [<ACarus@Abramslaw.com>](mailto:ACarus@Abramslaw.com)

Cc: Wicks, James [<JWicks@FarrellFritz.com>](mailto:JWicks@FarrellFritz.com); Susan Mauro [<SMauro@Abramslaw.com>](mailto:SMauro@Abramslaw.com); John Cahalan [<JCahalan@Abramslaw.com>](mailto:JCahalan@Abramslaw.com)

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Andrea,

The password for the CD that went out on October 18th is **November2019!**

Joshua M. Herman

Farrell Fritz, P.C.

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direct (646) 237-1809 | cell (516) 567-9632 | fax (646) 329-1988 | jherman@farrellfritz.com |

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From: Andrea J. Caruso [<ACarus@Abramslaw.com>](mailto:ACarus@Abramslaw.com)

Sent: Thursday, November 7, 2019 3:23 PM

To: Herman, Joshua M. [<JHerman@FarrellFritz.com>](mailto:JHerman@FarrellFritz.com)

Cc: Wicks, James [<JWicks@FarrellFritz.com>](mailto:JWicks@FarrellFritz.com); Susan Mauro [<SMauro@Abramslaw.com>](mailto:SMauro@Abramslaw.com); John Cahalan [<JCahalan@Abramslaw.com>](mailto:JCahalan@Abramslaw.com)

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

External Email

Unfortunately, as you were told previously, December 6th is unacceptable and given the timeline of the discovery, controlled by the Federal Bankruptcy Judge, is too late. We will be speaking with the Judge today and will get back to you on these items but I need additional production next week.

At the very least, by end of business TOMORROW, I want the password to the CD which was already produced by your client so we can access what has already been produced and should have already been supplied to us.

Andrea J. Caruso, Esq.

<image001.jpg>

Partner

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Email: ACaruso@Abramslaw.com

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From: Herman, Joshua M. <JHerman@FarrellFritz.com>

Sent: Thursday, November 7, 2019 2:56 PM

To: Andrea J. Caruso <ACaruso@Abramslaw.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Susan Mauro <SMauro@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Andrea,

Our efforts to identify, collect and produce documents responsive to all of your requests are continuing and ongoing. We are hopeful that we will be able to produce all such documents by December 6th. If we are able to produce some portion of these documents sooner, we will do so on a rolling basis.

Joshua M. Herman

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From: Andrea J. Caruso <ACaruso@Abramslaw.com>

Sent: Thursday, November 7, 2019 2:28 PM

To: Herman, Joshua M. <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Susan Mauro <SMauro@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

External Email

Josh:

I just attempted to call you to discuss this – I left you a voicemail as well. I understand that your office spoke with Susan last week and that no decision was ultimately made about the further production. However at this point I need a DATE CERTAIN (that falls within the next week), by the end of today that ALL documents will be produced by Signature Bank. Signature Bank received this subpoena over a month ago, began production, although no password was provided (which should be provided immediately), and has had the same or similar demands for documents for almost two (2) years. There is no reason or excuse at this point why your client cannot produce these documents ASAP. Please let me know where we stand with the production. Otherwise, you will leave us no choice but to get the Court involved which really should be unnecessary.

Andrea J. Caruso, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x503

Fax: 718-215-5304

Email: ACarusso@Abramslaw.com

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From: Herman, Joshua M. <JHerman@FarrellFritz.com>

Sent: Monday, October 28, 2019 3:06 PM

To: Susan Mauro <SMauro@Abramslaw.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Andrea J. Caruso <ACarusso@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Susan,

I am standing by to receive your call: (646) 237-1809.

Joshua M. Herman

Farrell Fritz, P.C.

622 Third Avenue, Suite 37200 | New York, NY 10017

direct (646) 237-1809 | cell (516) 567-9632 | fax (646) 329-1988 | jherman@farrellfritz.com |

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From: Susan Mauro <SMauro@Abramslaw.com>

Sent: Friday, October 25, 2019 5:22 PM

To: Herman, Joshua M. <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Andrea J. Caruso <ACarusso@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

External Email

Ok let's do 3pm. Thanks.

Susan Mauro, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x534

Fax: 718-215-5304

Email: SMAuro@Abramslaw.com

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From: Herman, Joshua M. [<mailto:JHerman@FarrellFritz.com>]

Sent: Friday, October 25, 2019 5:12 PM

To: Susan Mauro <SMAuro@Abramslaw.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Andrea J. Caruso <ACaruso@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

I am available Monday afternoon after 2:00 pm.

Joshua M. Herman

Farrell Fritz, P.C.

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direct (646) 237-1809 | cell (516) 567-9632 | fax (646) 329-1988 | jherman@farrellfritz.com |

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From: Susan Mauro <SMAuro@Abramslaw.com>

Sent: Friday, October 25, 2019 4:50 PM

To: Herman, Joshua M. <JHerman@FarrellFritz.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>; Andrea J. Caruso <ACaruso@Abramslaw.com>

Subject: RE: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

External Email

Counsel,

Please advise if you are available on Monday for a meet and confer to address your email below. Thank you.

Susan Mauro, Esq.

<image001.jpg>

Partner

Tel: 718-215-5300 x534

Fax: 718-215-5304

Email: SMauro@Abramslaw.com

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From: Herman, Joshua M. [<mailto:JHerman@FarrellFritz.com>]

Sent: Friday, October 25, 2019 1:26 PM

To: Susan Mauro <SMauro@Abramslaw.com>

Cc: Wicks, James <JWicks@FarrellFritz.com>

Subject: In re 53 Stanhope, LLC, et al. - Signature Bank subpoenae

Susan,

I left a voicemail earlier this week to discuss Signature Bank's document production and deposition availability in response to your firm's subpoenae. Please call at your earliest convenience.

Joshua M. Herman

Farrell Fritz, P.C.

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